- Prohibiting the integrated firm from denying competitors access to necessary manufacturing inputs or distribution outlets for its products;(27) and
- Establishing a "firewall" to prevent companies from gaining access to a rival's competitively sensitive information.

The Commission continues to investigate proposed vertical mergers and to require consent agreements when appropriate.

CONCLUSION

Thank you for the opportunity to share with you some of my preliminary observations about the complex and intriguing area of vertical restraints.

Endnotes:

1. E.g., White Motor Co. v. United States, 372 U.S. 253 (1963) (remanding for a determination of the competitive effects of exclusive territorial and customer restrictions); United States v. Arnold Schwinn & Co., 388 U. S. 365 (1967) (holding territorial restraints to be per se illegal); Continental T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36 (1977) (holding vertical nonprice restraints to be judged under the rule of reason).

2. Monsanto Co. v. Spray-Rite Serv. Corp., 465 U.S. 752, 768 (1984).

3. Id.

4. See Business Electronics Corp. v. Sharp Electronics Corp., 485 U.S. 717 (1988); Dr. Miles Medical Co. v. John D. Park & Sons, 220 U.S. 373 (1911).

5. United States v. Colgate & Co., 250 U.S. 300 (1919).

6. See Isaksen v. Vermont Castings, 825 F.2d 1158, 1162 (7th Cir. 1987), cert. denied, 486 U.S. 1005 (1988).

7. See Mesirow v. Pepperidge Farm, 703 F.2d 339, 344 (9th Cir.), cert. denied, 464 U.S. 820 (1983).

8. See Jack Walters & Sons v. Morton Building, Inc., 737 F.2d 698, 707 (7th Cir.), cert. denied, 469 U.S. 1018 (1984).

9. See Monsanto Co., supra.

10. AAA Liquors Inc. v. Joseph E. Seagram & Sons, 705 F.2d 1203, 1206 (10th Cir. 1982), cert. denied, 461 U.S. 919 (1983).

11. See Isaksen v. Vermont Castings, 825 F.2d at 1162-63.

12. See Pitchford v. PEPI, Inc., 531 F.2d 92, 98 (3rd Cir.), cert. denied, 426 U.S. 935 (1976).

13. See American Cyanamid Corp., C-3739 (FTC Consent Order May 12, 1997).

14. In Lehrman v. Gulf Oil Corp., 464 F.2d 26, 39, 40 (5th Cir.), cert. denied, 409 U.S. 1077 (1972), the Fifth Circuit stated that ". . . adherence to a suggested price schedule was the quid pro quo for Lehrman's receiving Gulf's [temporary competitive allowances]" and "there is no comparable justification for conditioning wholesale price support upon adherence to a schedule of minimum retail prices." Similarly, the Supreme Court has noted that by offering financial inducements in return for selling at specified minimum prices, a manufacturer seeks the "acquiescence or agreement" of its dealers in a resale price-fixing scheme. Monsanto, supra, 465 U.S. at 764 n. 9.

15. See New Balance Athletic Shoe, C-3683 (FTC Consent Order Sept. 10, 1996), Reebok International, C-3592 (FTC Consent Order July 18, 1995).

16. See Nintendo of America, 114 F.T.C. 702 (1991) (Consent Order).

17. "Colgate rights" refer to a manufacturer's right to suggest prices and cease dealing with those who do not adhere to those prices, as long as it does so unilaterally. See United States v. Colgate & Co., 250 U.S. 300 (1919).

18. No. 96-871, reprinted in 73 Antitrust & Trade Reg. Rep. (BNA) 452 (Nov. 6, 1997).

19. State Oil, supra, at 455.

20. See Continental T.V. v. GTE Sylvania, 433 U.S. 36 (1977).

21. Beltone Electronics Corp., 100 F.T.C. 68, 204 (1982).

22. See, e.g., Standard Oil Co. v. United States, 337 U. S. 293, 306-07 (1949) (listing procompetitive aspects of exclusive dealing agreements).

23. See Inter-City Tire & Auto Center v. Uniroyal, 701 F. Supp. 1120, 1123-24 (D. N.J. 1988), aff'd, 888 F.2d 1382 (3rd Cir. 1989).

24. Cf. Krattenmaker & Salop, Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price, 96 Yale L.J. 209 (1986).

25. See, e.g., Time Warner/Turner, C-3709 (FTC Consent Order Feb. 3, 1997) (resolving concerns about access to programming for cable operators and other forms of video distribution, and access to distribution by producers of video programming); Cadence Design Systems, Inc., Consent Order Aug. 7, 1997); Silicon Graphics, C-3626 (FTC Consent Order Nov. 14, 1995). C-3761 (FTC

26. See, e.g., Lockheed/Martin Marietta, C-3576 (FTC Consent Order May 9, 1995) (integrated firm, in its new capacity as supplier, could receive sensitive information about the plans or technology of its horizontal competitor); Lockheed Martin/Loral, C-3685 (FTC Consent Order Sept. 19, 1996) (same); Eli Lilly/McKesson, C-3594 (FTC Consent Order July 28, 1995).

27. See, e.g., Time Warner/Turner, supra; Eli Lilly/McKesson, supra.

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CNET News

Comcast walks away from Pivot

The joint venture with Sprint-Nextel was intended to be combine cable TV, Internet, and both land and wireless phone service.

by **Erica Ogg** | April 23, 2008 5:29 PM PDT

Comcast said Wednesday it has changed its mind on a joint wireless communication venture with Sprint-Nextel, according to a **Reuters report [http://www.reuters.com/article/technologyNews/idUSN23461898200804231]**

The service, called Pivot, was **begun as a partnership [http://www.cnet.com/Cable-companies-call-on-Sprint-Nextel/2100-1039_3-5928037.html]** between the cable giant, Sprint, Time Warner, Cox Communications, and Advanced/Newhouse Communications in 2006. It offered a package of services, including TV, broadband, and both a landline and wireless phone service.

"We decided to discontinue the service because the product required a lot of operational complexities, so we decided it wasn't the approach we wanted for the long term," said a Comcast spokesperson.

Well, that's one way of putting it. By the end of last year, demand was so low for Pivot they stopped marketing it. Part of the problem is that nearly 80 percent of U.S. residents already subscribe to a cell phone service. And the cable operators weren't given much freedom in pricing or packaging the Pivot service to make it enticing enough for people to switch carriers.

Comcast said its Pivot mobile customers would be switched to a similar Sprint package.

CNET News.com's Marguerite Reardon contributed to this report.

Erica Ogg [http://www.cnet.com/profile/ericaatnews/]

Erica Ogg is a CNET News reporter who covers Apple, HP, Dell, and other PC makers, as well as the consumer electronics industry. She's also one of the hosts of CNET News' Daily Podcast. In her non-work life, she's a history geek, a loyal Dodgers fan, and a mac-and-cheese connoisseur.

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The Cricket Difference: Unlimited Respect. Cricket respects your freedom and your wallet. While other wireless companies lock you into contracts with costly cancelation fees, we want you to stay a Cricket customer because you want to, not because you're forced to. We want to provide you with a wide variety of plans to choose from, so you can find the one that that'll help you stay connected. We work hard to earn your loyalty, every day!

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latimes.com/business/la-fi-ct-cricket-20120207,0,2200481.story

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Cricket Wireless has the music industry feeling chirpy

The cellphone carrier's MuveMusic service has helped labels tap a vast underserved audience: people who can't afford computers. Muve users can download songs directly to their phones. In less than a year it has grown to more than 500,000 subscribers.

By Alex Pham, Los Angeles Times

February 7, 2012

Reporting from San Diego

For the embattled music industry, hope lies inside a small corner store in the City Heights section of San Diego.

In a neighborhood chock-full of Mexican, Vietnamese and Somalian restaurants, Larry Woelfel, a 40-year-old unemployed lab technician, waited with two dozen customers to buy cellphones and service from a San Diego company called Cricket Wireless.

By also signing up for Cricket's MuveMusic digital music service, Woelfel illustrates Cricket's emergence as one of the music industry's best hopes for tapping a vast underserved audience.

Ravaged by piracy, plummeting sales of CDs and a proliferation of free, legal alternatives such as YouTube, the music industry's sales have fallen from $29.4 billion in 2005 to $17.3 billion last year, according to Enders Analysis. Now record companies are scrambling to find new sources of revenue.

Cricket customers like Woelfel, who pay as little as $45 a month for unlimited text, talk and data, are plunking down $10 more for unlimited music.

Although the music industry's piece of that monthly fee is minuscule, more than 500,000 people have signed up for Muve since the service launched in May, placing Muve among the three largest premium, on-demand digital music services in the country. Rhapsody is No. 1, with 1 million paying customers, and Muve and Spotify are neck and neck for No. 2.

What's more, Cricket's customers come from a slice of society largely ignored by companies peddling cutting-edge technology and digital media. More than half of the service's subscribers are African American or Latino and earn less than $50,000 a year. Fewer than 35% own laptops. Cellphones are the center of their digital lives.

Cricket started in 1998 as an international phone company serving Latin America, selling an all-you-can-talk deal to customers without credit cards. Later Cricket brought the same offer to the U.S. The company learned its customers were obsessive about ring tones.

"We realized that music was very important to our customers," said Jeff Toig, Cricket's general manager for MuveMusic. "Most of them didn't have computers. They didn't have iTunes. They weren't subscribing to Rhapsody. They told us about the trouble they went through to get music on to their phones. For them, it was a point of pain."

So Toig and other Muve executives spent two years developing the service and a hack-resistant memory card that would hold thousands of songs and deliver incremental profits to music companies. When Cricket introduced a test version of the service a year ago in Las Vegas, lines formed out the door and down the block.

A typical customer is Pamela Mitchell, 39-year-old founder of the Washington., D.C., nonprofit group Hip Hop Scholars, which promotes educational achievement through urban music. Mitchell signed up with Cricket in August for a package that costs 5% less than her old Sprint service.

What sold her was the all-you-can-download music, which has transformed her habits as a music consumer. Before she got Muve, neither Mitchell nor her teenage son were active music buyers. She listened to old CDs; her son listened to YouTube.

Now she spends three to four hours a day listening to music on her phone. At work, she uses the service to play songs for her music appreciation and history class.

So far, Cricket has gone largely unnoticed by the musical digerati. The tiny cellphone carrier has just 5.9 million customers, or less than 2% of the U.S. cellphone market. Since its 1998 start, Cricket has offered service in 65 cities nationwide. In September, the company announced its presence in Los Angeles with bus bench ads and billboards.

Cricket's growth partly stems from its business model. Unlike giants AT&T Inc. and Verizon Communications Inc., the company requires no annual contract. And unlike competitors Rhapsody and BlackBerry Music, Cricket does not send its customers a separate bill for music. The cost is included in a single monthly bill.

Music labels are thrilled with the arrangement, which gives Cricket's label partners — Universal Music Group, Warner Music Group, Sony Music Entertainment, EMI Music and independent labels represented by Merlin Network and INgrooves — a steady stream of revenue.

"The engagement we're seeing on the service is incredible," said Stephen Bryan, senior vice president of digital strategy at Warner Music Group in New York.

The partnership is going so well that labels are using Cricket as a platform for introducing up-and-coming artists, such as Jason Derulo, a pop singer signed with Warner Music Group who recently gave Muve subscribers a free concert in Chicago.

Other digital music services — such as Pandora, Sirius XM and YouTube — have millions more users. Cricket's Muve, however, sits in the paid premium category. Record companies receive a higher royalty rate than with other types of music services — a fixed amount for every Muve subscriber. The amount, which is undisclosed, is divided among record companies according to how often songs in their catalogs are played.

Each month the average Muve customer listens to music on his or her Cricket phone about 40 hours and downloads 300 new songs, drawing from a catalog of 5 million songs, a number expected to grow to 10 million titles by the end of this year.

That translates to only a fraction of a penny per song played on the Muve service, but those pennies can add up. With 500,000 subscribers paying $10 a month for music, Cricket collects $60 million a year in added revenue. Although the companies don't disclose what portion goes to music labels, executives knowledgeable about the figures say the labels combined get 20% to 50%.

"These are brand-new customers who previously spent little or no money on music," said Rob Wells, president of Universal Music's global digital business. "It's a demographic that the music industry has had tremendous trouble reaching. For us, being able to tap into a new segment of consumers has been invaluable."

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Google

News from Google

Industry Leaders Announce Open Platform for Mobile Devices

Group Pledges to Unleash Innovation for Mobile Users Worldwide

MOUNTAIN VIEW, Calif.; BONN, Germany; TAOYUAN, Taiwan; SAN DIEGO, Calif.; SCHAUMBURG, Ill. (November 5, 2007) – A broad alliance of leading technology and wireless companies today joined forces to announce the development of Android, the first truly open and comprehensive platform for mobile devices. Google Inc., T-Mobile, HTC, Qualcomm, Motorola and others have collaborated on the development of Android through the Open Handset Alliance, a multinational alliance of technology and mobile industry leaders.

This alliance shares a common goal of fostering innovation on mobile devices and giving consumers a far better user experience than much of what is available on today's mobile platforms. By providing developers a new level of openness that enables them to work more collaboratively, Android will accelerate the pace at which new and compelling mobile services are made available to consumers.

With nearly 3 billion users worldwide, the mobile phone has become the most personal and ubiquitous communications device. However, the lack of a collaborative effort has made it a challenge for developers, wireless operators and handset manufacturers to respond as quickly as possible to the ever-changing needs of savvy mobile consumers. Through Android, developers, wireless operators and handset manufacturers will be better positioned to bring to market innovative new products faster and at a much lower cost. The end result will be an unprecedented mobile platform that will enable wireless operators and manufacturers to give their customers better, more personal and more flexible mobile experiences.

Thirty-four companies have formed the Open Handset Alliance, which aims to develop technologies that will significantly lower the cost of developing and distributing mobile

Google

News from Google

Sprint and Google Expand Relationship to Enable Richer Mobile Experience and more Choices for Sprint Customers

Sprint Handsets to Feature Easy Access to Google Mobile Search, Google Maps for Mobile, YouTube and More

Overland Park – May 7, 2008 – Sprint and Google [NASDAQ: GOOG] today announced a partnership aimed at more deeply integrating Google applications and services into Sprint customers' mobile experience. As part of the deal, Google™ will become Sprint's preferred mobile search provider and Sprint users will have easier access to Google Maps™ for mobile, YouTube™ and more.

Sprint and Google are committed to providing users with the most dynamic mobile experience possible. Both companies have actively advocated the importance of an open mobile ecosystem and understand that users should have more choice when it comes to selecting and accessing content on a mobile phone.

"Our partnership with Google is a great example of how Sprint is making the mobile Internet experience even more customer-friendly and useful to our customers," said Kevin Packingham, vice president of product management at Sprint. "Sprint looks forward to extending its partnership with Google, and to bringing customers a mobile experience enhanced by the speed of the Now Network, complimented by the services of Google."

"Google and Sprint have a lot in common when it comes to our vision for the mobile web," said Doug Garland, vice president of product management at Google. "We both believe in openness and providing compelling, easy-to-use mobile services that consumers can use every day. We look forward to working together to deliver a great experience."

Apple Launches iPad

Magical & Revolutionary Device at an Unbelievable Price

SAN FRANCISCO—January 27, 2010—Apple® today introduced iPad, a revolutionary device for browsing the web, reading and sending email, enjoying photos, watching videos, listening to music, playing games, reading e-books and much more. iPad's responsive high-resolution Multi-Touch™ display lets users physically interact with applications and content. iPad is just 0.5 inches thick and weighs just 1.5 pounds— thinner and lighter than any laptop or netbook. iPad includes 12 new innovative apps designed especially for the iPad, and will run almost all of the over 140,000 apps in the App Store. iPad will be available in late March starting at the breakthrough price of just $499.

"iPad is our most advanced technology in a magical and revolutionary device at an unbelievable price," said Steve Jobs, Apple's CEO. "iPad creates and defines an entirely new category of devices that will connect users with their apps and content in a much more intimate, intuitive and fun way than ever before."

iPad features 12 next-generation Multi-Touch applications. Every app works in both portrait and landscape, automatically animating between views as the user rotates iPad in any direction. The precise Multi-Touch interface makes surfing the web on iPad an entirely new experience, dramatically more interactive and intimate than on a computer. Reading and sending email is fun and easy on iPad's large screen and almost full-size "soft" keyboard. Import photos from a Mac®, PC or digital camera, see them organized as albums, and enjoy and share them using iPad's elegant slideshows. Watch movies, TV shows and YouTube, all in HD or flip through pages of an e-book you downloaded from Apple's new iBookstore while listening to your music collection.

iPad runs almost all of the over 140,000 apps on the App Store, including apps already purchased for your iPhone® or iPod touch®. The iTunes® Store gives you access to the world's most popular online music, TV and movie store with a catalog of over 11 million songs, over 50,000 TV episodes and over 8,000 films including over 2,000 in stunning high definition video. Apple also announced the new iBooks app for iPad, which includes Apple's new iBookstore, the best way to browse, buy and read books on a mobile device. The iBookstore will feature books from major and independent publishers.

Apple also introduced a new version of iWork® for iPad, the first desktop-class productivity suite designed specifically for Multi-Touch. With Pages®, Keynote® and Numbers® you can create beautifully formatted documents, stunning presentations with animations and transitions, and spreadsheets with charts, functions and formulas. The three apps will be available separately through the App Store for $9.99 each.

iPad syncs with iTunes just like the iPhone and iPod touch, using the standard Apple 30-pin to USB cable, so you can sync all of your contacts, photos, music, movies, TV shows, applications and more from your Mac or PC. All the apps and content you download on iPad from the App Store, iTunes Store and iBookstore will be automatically synced to your iTunes library the next time you connect with your computer.

iPad's brilliant 9.7-inch, LED-backlit display features IPS technology to deliver crisp, clear images and consistent color with an ultra-wide 178 degree viewing angle. The highly precise, capacitive Multi-Touch display is amazingly accurate and responsive whether scrolling web pages or playing games. The intelligent soft keyboard pioneered on iPhone takes advantage of iPad's larger display to offer an almost full-size soft keyboard. iPad also connects to the new iPad Keyboard Dock with a full-size traditional keyboard.

iPad is powered by A4, Apple's next-generation system-on-a-chip. Designed by Apple, the new A4 chip provides exceptional processor and graphics performance along with long battery life of up to 10 hours.* Apple's advanced chemistry and Adaptive Charging technology deliver up to 1,000 charge cycles without a significant decrease in battery capacity over a typical five year lifespan.**

iPad comes in two versions—one with Wi-Fi and the other with both Wi-Fi and 3G. iPad includes the latest 802.11n Wi-Fi, and the 3G versions support speeds up to 7.2 Mbps on HSDPA networks. Apple and AT&T announced breakthrough 3G pre-paid data plans for iPad

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with easy, on-device activation and management.

Continuing Apple's dedication to designing and creating environmentally responsible products, each iPad enclosure is made of highly recyclable aluminum and comes standard with energy-efficient LED-backlit displays that are mercury-free and made with arsenic-free glass. iPad contains no brominated flame retardants and is completely PVC-free.

Apple today released a new Software Development Kit (SDK) for iPad, so developers can create amazing new applications designed to take advantage of iPad's capabilities. The SDK includes a simulator that lets developers test and debug their iPad apps on a Mac, and also lets developers create Universal Applications that run on iPad, iPhone and iPod touch.

Pricing & Availability
iPad will be available in late March worldwide for a suggested retail price of $499 (US) for the 16GB model, $599 (US) for the 32GB model, $699 (US) for the 64GB model. The Wi-Fi + 3G models of iPad will be available in April in the US and selected countries for a suggested retail price of $629 (US) for the 16GB model, $729 (US) for the 32GB model and $829 (US) for the 64GB model. iPad will be sold in the US through the Apple Store® (www.apple.com), Apple's retail stores and select Apple Authorized Resellers. International pricing and worldwide availability will be announced at a later date. iBookstore will be available in the US at launch.

*Apple tested wireless battery life by browsing web pages and receiving email over an AirPort® network, never letting the system go to sleep during the test, and keeping the display at half brightness. This is a typical scenario of use on the go, resulting in a battery performance number that is very relevant to mobile users.

**A properly maintained iPad battery is designed to retain 80 percent or more of its original capacity during a lifespan of up to 1,000 recharge cycles. Battery life and charge cycles vary by use and settings.

Apple ignited the personal computer revolution in the 1970s with the Apple II and reinvented the personal computer in the 1980s with the Macintosh. Today, Apple continues to lead the industry in innovation with its award-winning computers, OS X operating system and iLife and professional applications. Apple is also spearheading the digital media revolution with its iPod portable music and video players and iTunes online store, and has entered the mobile phone market with its revolutionary iPhone.

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Marvell Announces Wireless/ Wireline Integrated Packet Processor for GE Market

The Cost, Performance and Power Optimized, 98DX2x3 Reduces Time to Market By 50 Percent

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Las Vegas, Nevada (May 3, 2005) –

Marvell® (NASDAQ: MRVL), the technology leader in the development of extreme broadband communications and storage solutions, today announced multilayer wireless/wireline integrated packet processor solutions based on the Prestera 98DX2x3 family of products. The Presetra 98DX2x3 is in production for the 2nd quarter and provides wire-speed IPv4/IPv6 routing, flexible policy-based security and QoS engines, and comprehensive network shield for protecting against denial of service attacks. Marvell will demonstrate its 98DX2x3 family in booth # 939 at NetWorld+Interop 2005 in Las Vegas, May 3 – 5.

The 98DX2x3 was custom designed for the new and demanding GE market. What separates the 98DX2x3 from other packet processors offering, is that it enhances customer designs with integrated solutions that combine software components, driver suites, customization capabilities and the ability to design-in system features in the best price performance segment. The enhancements offered to the customers have proven to reduce time to market by 50 percent.

Leveraging Marvell's 10 years as a leading provider in the switch market space, the 98DX2x3 is cost, performance and power optimized. 98DX2x3 can operate all 24GE and 3 XAUIs in under 9 watts and has an economic package footprint. Prestera customers are able to upgrade all platforms based on the 98DX2x0 family to the 98DX2x3 family. Marvell has maintained pin-to-pin, voltage and SW are backward compatibility, allowing customers to minimize the investment while accomplishing new level of multilayer features.

"Marvell is the leading innovator in stackable switch market today, delivering the most flexible and scalable policy-based security features," said Paul Valentine, General Manager, Enterprise Business Unit, Communications Business Group at Marvell. "We are pleased to continue this momentum with 98DX2x3, and enabling our customers to significantly reduce their product development costs and time to market."

98DX2x3 combines 12Gbps uplinks with the "Distributed Switching Architecture" (DSA) to provide seamless expansion and features across stack. The DX family has IPv6 routing, ACL and QoS support from day one, enabling future-proof stackable switches that can last for years.

ABOUT THE PRESTERA DX FAMILY OF PRODUCTS

The DX platform is designed for wireless/wireline integration, supporting QoS/Security assigned to a virtual user location (either on the wire or wireless network), fast roaming and inter-subnet roaming. The DX wireless integration is cost optimized for a wireless switch implementation, as both wireline and wireless features converge in the Silicon level.

The DX offers solutions from entry level smart managed up to stackable GE products with complete L2/L3/L4 and security features. All products are based on available system features, software capabilities, and advance customization and feature differentiation. The Marvell solution can provide customers with extreme time-to-market, predictable and riskless execution, while maintaining the upper hand in the solution differentiation.

AVAILABILITY

The comprehensive solutions designed around the 98DX2x3 have integrated wireless capabilities and products based on the 98DX2x3 family will be launched over the next quarter.

ABOUT MARVELL

Marvell (NASDAQ: MRVL) is the leading global semiconductor provider of complete broadband communications and storage solutions. The Company's diverse product portfolio includes switching, transceiver, communications controller, wireless, and storage solutions that power the entire communications infrastructure, including enterprise, metro, home, and storage networking. As used in this release, the terms "Company" and "Marvell" refer to Marvell Technology Group Ltd. and its subsidiaries, including Marvell Semiconductor, Inc. (MSI), Marvell Asia Pte Ltd. (MAPL), Marvell Japan K.K., Marvell Taiwan Ltd., Marvell International Ltd. (MIL), Marvell U.K. Limited, Marvell Semiconductor Israel Ltd. (MSIL), RADLAN Computer Communications Ltd., and SysKonnect GmbH. MSI is headquartered in Sunnyvale, Calif., and designs, develops and markets products on behalf of MIL and MAPL. MSI may be contacted at (408) 222-2500 or at www.marvell.com.

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Google

Google to Acquire Motorola Mobility

Combination will Supercharge Android, Enhance Competition, and Offer Wonderful User Experiences

MOUNTAIN VIEW, CA and LIBERTYVILLE, IL – AUGUST 15, 2011 – Google Inc. (NASDAQ: GOOG) and Motorola Mobility Holdings, Inc. (NYSE: MMI) today announced that they have entered into a definitive agreement under which Google will acquire Motorola Mobility for $40.00 per share in cash, or a total of about $12.5 billion, a premium of 63% to the closing price of Motorola Mobility shares on Friday, August 12, 2011. The transaction was unanimously approved by the boards of directors of both companies.

The acquisition of Motorola Mobility, a dedicated Android partner, will enable Google to supercharge the Android ecosystem and will enhance competition in mobile computing. Motorola Mobility will remain a licensee of Android and Android will remain open. Google will run Motorola Mobility as a separate business.

Larry Page, CEO of Google, said, "Motorola Mobility's total commitment to Android has created a natural fit for our two companies. Together, we will create amazing user experiences that supercharge the entire Android ecosystem for the benefit of consumers, partners and developers. I look forward to welcoming Motorolans to our family of Googlers."

Sanjay Jha, CEO of Motorola Mobility, said, "This transaction offers significant value for Motorola Mobility's stockholders and provides compelling new opportunities for our employees, customers, and partners around the world. We have shared a productive partnership with Google to advance the Android platform, and now through this combination we will be able to do even more to innovate and deliver outstanding mobility solutions across our mobile devices and home businesses."

Andy Rubin, Senior Vice President of Mobile at Google, said, "We expect that this combination will enable us to break new ground for the Android ecosystem. However, our vision for Android is unchanged and Google remains firmly committed to Android as an open platform and a vibrant open source community. We will continue to work with all of our valued Android partners to develop and distribute innovative Android-powered devices."

The transaction is subject to customary closing conditions, including the receipt of regulatory approvals in the US, the European Union and other jurisdictions, and the approval of Motorola Mobility's stockholders. The transaction is expected to close by the end of 2011 or early 2012.

Webcast Information

Google and Motorola Mobility will hold a conference call with financial analysts to discuss this announcement today at 8:30am ET. The toll-free dial-in number for the call is 877-616-4476 (conference ID: 92149124). The call will also be webcast live at http://investor.shareholder.com/media/eventdetail.cfm?eventid=101369&CompanyID=ABEA-3VZHGF&e=1&mediaKey=A21887C59EBAAC12F1BCF4D43C080953. The webcast version of the conference call will be available through the same link following the conference call.

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE Monday, February 13, 2012

Statement of the Department of Justice's Antitrust Division on Its Decision to Close Its Investigations of Google Inc.'s Acquisition of Motorola Mobility Holdings Inc. and the Acquisitions of Certain Patents by Apple Inc., Microsoft Corp. and Research in Motion Ltd.

WASHINGTON – The Department of Justice's Antitrust Division issued the following statement today after announcing the closing of its investigations into Google Inc.'s acquisition of Motorola Mobility Holdings Inc., the acquisitions by Apple Inc., Microsoft Corp. and Research in Motion Ltd. (RIM) of certain Nortel Networks Corporation patents, and the acquisition by Apple of certain Novell Inc. patents:

"After a thorough review of the proposed transactions, the Antitrust Division has determined that each acquisition is unlikely to substantially lessen competition and has closed these three investigations. In all of the transactions, the division conducted an in-depth analysis into the potential ability and incentives of the acquiring firms to use the patents they proposed acquiring to foreclose competitors. In particular, the division focused on standard essential patents (SEPs) that Motorola Mobility and Nortel had committed to license to industry participants through their participation in standard-setting organizations (SSOs). The division's investigations focused on whether the acquiring firms could use these patents to raise rivals' costs or foreclose competition.

"The division concluded that the specific transactions at issue are not likely to significantly change existing market dynamics.

"During the course of the division's investigation, several of the principal competitors, including Google, Apple and Microsoft, made commitments concerning their SEP licensing policies. The division's concerns about the potential anticompetitive use of SEPs was lessened by the clear commitments by Apple and Microsoft to license SEPs on fair, reasonable and non-discriminatory terms, as well as their commitments not to seek injunctions in disputes involving SEPs. Google's commitments were more ambiguous and do not provide the same direct confirmation of its SEP licensing policies.

"In light of the importance of this industry to consumers and the complex issues raised by the intersection of the intellectual property rights and antitrust law at issue here, as well as uncertainty as to the exercise of the acquired rights, the division continues to monitor the use of SEPs in the wireless device industry, particularly in the smartphone and computer tablet markets. The division will not hesitate to take appropriate enforcement action to stop any anticompetitive use of SEP rights."

BACKGROUND

Google/ Motorola Mobility

On Aug. 25, 2011, Google entered into an agreement to acquire Motorola Mobility, a manufacturer of smartphones and computer tablets and the holder of a portfolio of approximately 17,000 issued patents and 6,800 applications, including hundreds of SEPs relevant to wireless devices that Motorola Mobility committed to license through its participation in SSOs.

Rockstar Bidco

Rockstar Bidco, a partnership that includes, among others, RIM, Microsoft and Apple, was formed to acquire patents at the June 2011 Nortel bankruptcy auction, and to license and distribute them to certain partners. Nortel's portfolio of approximately 6,000 patents and patent applications includes many SEPs that Nortel committed to license through its participation in SSOs and that are relevant to wireless devices (the Nortel SEPs).

Apple/Novell

Apple also proposes to acquire patents held by CPTN Holdings LLC, formerly owned by Novell, following CPTN's acquisition in April 2011 of those patents on behalf of Apple, Oracle Corporation and EMC Corporation. As a member of the Open Invention Network (OIN), Novell committed to cross-license its patents on a royalty-free basis for use in the open source "Linux system," a defined term in the OIN.

Competitive Landscape

Google, Apple, Microsoft and RIM have each developed mobile operating systems for smartphones and tablets. Apple and RIM manufacture and sell the smartphones and tablets that run on their proprietary mobile operating systems. In contrast, Microsoft licenses its proprietary mobile operating systems, Windows Phone 7 and Windows Mobile, to non-affiliated wireless handset original equipment manufacturers (OEMs). Google, in turn, sponsors Android, a mobile operating system that it distributes to OEMs without monetary charge under an open source license. These operating systems provide platforms for a variety of products and services offered by competing handset and tablet manufacturers, as well as, application developers.

At the end of 2011, Google's Android accounted for approximately 46 percent of the U.S. smartphone operating system platform subscribers and Apple's iOS was used by about 30 percent of subscribers. RIM and Microsoft accounted for approximately 15 percent and 6 percent of the share of smartphone subscribers, respectively.

Apple's iPad is the leading tablet in the market, although the recently introduced Android-based tablets are rapidly gaining share. Thus far, tablets running RIM's and Microsoft's operating systems have a minimal presence in the marketplace.

The Importance of Standard Setting in the Wireless Industry

Today's wireless device industry, which includes smartphones and tablets, relies on complex operating systems that allow seamless interaction with wireless communications technologies while providing audio, video and computer functionalities.

To facilitate seamless interoperability, industry participants work through SSOs collectively to develop technical standards that establish precise specifications for essential components of the technology. For example, wireless devices typically implement a significant number of telecommunication and computer standards, including cellular air interface standards (*e.g.*, 3G and 4G LTE standards), wireless broadband technologies (*e.g.*, WiFi and WiMax) and video compression technologies (*e.g.*, H.264). As with other industries, these standards facilitate compatibility among products and provide consumers with a wider range of products and capabilities than would otherwise be available.

Often, many technologies adopted by the SSOs fall within the scope of existing patents or patent applications. Once a patent is included in a standard, it becomes essential to the implementation of that standard, thus the term "Standard Essential Patent." After industry participants make complementary investments, abandoning the standard can be extremely costly. Thus, after the standard is set, the patent holder could seek to extract a higher payment than was attributable to the value of the patented technology before the standard was set. Such behavior can distort innovation and raise prices to consumers . A comparable harm may also arise in situations outside of the SSO context where a patent holder's prior actions, such as open source commitments, lead others to make complementary investments (See U.S. Department of Justice and Federal Trade Commission, *Antitrust Enforcement & Intellectual Property Rights: Promoting Innovation and Competition*, April 17, 2007 at 35-6).

Most SSOs therefore require the owners of patents essential to the proposed standard that are participating in the SSO's standard-setting activities to make disclosure and licensing commitments with respect to their essential patents. These commitments are intended to reduce the subsequent inappropriate use of the patent rights at issue, and thus prevent disputes that can inhibit innovation and competition. One com mon licensing requirement is to require SSO members to commit to license patented technologies essential to a standard on reasonable and nondiscriminatory (RAND) terms (for SSOs based in the United States) or on fair, reasonable and nondiscriminatory (FRAND) terms (for SSOs based outside the United States) (collectively F/RAND). In practice, however, SSO F/RAND requirements have not prevented significant disputes from arising in connection with the licensing of SEPs, including actions by patent holders seeking injunctive or exclusionary relief that could alter competitive market outcomes.

ANALYSIS

The division's investigations regarding the acquisitions of the Motorola Mobility and Nortel SEPs focused on whether the acquiring firms would have the incentive and ability to exploit ambiguities in the SSOs' F/RAND licensing commitments to hold up rivals, thus preventing or inhibiting innovation and competition (The division's analysis was limited to SEPs encumbered by F/RAND commitments). Such hold up could include raising the costs to rivals by demanding supracompetitive licensing rates, compelling prospective licensees to grant the SEP holder the right to use the licensee's differentiating intellectual property, charging licensees the entire portfolio royalty rate when licensing only a small subset of the patent holder's SEPs in its portfolio, or seeking to prevent or exclude products practicing those SEPs from the market altogether. In this analysis, the critical issue is whether the patent holder has the incentive and ability to hold up its competitors, particularly through the threat of an injunction or exclusion order. The division's analysis focused on how the proposed transactions might change that incentive and ability to do so.

The division concluded that each of the transactions was unlikely to substantially lessen competition for wireless devices. With respect to RIM's and Microsoft's acquisition of Nortel patents, their low market shares in mobile platforms would likely make a strategy to harm rivals either through injunctions or supracompetitive royalties based on the acquired Nortel SEPs unprofitable. Because of their low market shares, they are unlikely to attract a sufficient number of new customers to their mobile platforms to compensate for the lost patent royalty revenues. Moreover, Microsoft has cross-license agreements in place with the majority of its Android-based OEM competitors, making such a strategy even less plausible for it.

Apple's and Google's substantial share of mobile platforms makes it more likely that as the owners of additional SEPs they could hold up rivals, thus harming competition and innovation. For example, Apple would likely benefit significantly through increased sales of its devices if it could exclude Android -based phones from the market or raise the costs of such phones through IP-licenses or patent litigation. Google could similarly benefit by raising the costs of, or excluding, Apple devices because of the revenues it derives from Android-based devices.

The specific transactions at issue, however, are not likely to substantially lessen competition. The evidence shows that Motorola Mobility has had a long and aggressive history of seeking to capitalize on its intellectual property and has been engaged in extended disputes with Apple, Microsoft and others. As Google's acquisition of Motorola Mobility is unlikely to materially alter that policy, the division concluded that transferring ownership of the patents would not substantially alter current market dynamics. This conclusion is limited to the transfer of ownership rights and not the exercise of those transferred rights.

With respect to Apple/Novell, the division concluded that the acquisition of the patents from CPTN, formerly owned by Novell, is unlikely to harm competition. While the patents Apple would acquire are important to the open source community and to Linux-based software in particular, the OIN, to which Novell belonged, requires its participating patent holders to offer a perpetual, royalty-free license for use in the "Linux-system." The division investigated whether the change in ownership would permit Apple to avoid OIN commitments and seek royalties from Linux users. The division concluded it would not, a conclusion made easier by Apple's commitment to honor Novell's OIN licensing commitments.

In its analysis of the transactions, the division took into account the fact that during the pendency of these investigations, Apple, Google and Microsoft each made public statements explaining their respective SEP licensing practices. Both Apple and Microsoft made clear that they will not seek to prevent or exclude rivals' products from the market in exercising their SEP rights.

Apple outlined its view of F/RAND in a letter to the European Telecommunications Standards Institute (ETSI) on Nov. 11, 2011, stating among other things:

"A party who made a FRAND commitment to license its cellular standards essential patents or otherwise acquired assets/rights from a party who made the FRAND commitment must not seek injunctive relief on such patents. *Seeking an injunction would be a violation of the party's commitment to FRAND licensing.*" (emphasis supplied)

Microsoft stated publicly on Feb. 8, 2012, among other things:

"This means that Microsoft will not seek an injunction or exclusion order against any firm on the basis of those essential patents."

If adhered to in practice, these positions could significantly reduce the possibility of a hold up or use of an injunction as a threat to inhibit or preclude innovation and competition.

Google's commitments have been less clear. In particular, Google has stated to the IEEE and others on Feb. 8, 2012, that its policy is to refrain from seeking injunctive relief for the infringement of SEPs against a counter-party, but apparently only for disputes involving future license revenues, and only if the counterparty: forgoes certain defenses such as challenging the validity of the patent; pays the full disputed amount into escrow; and agrees to a reciprocal process regarding injunctions. Google's statement therefore does not directly provide the same assurance as the other companies' statements concerning the exercise of its newly acquired patent rights. Nonetheless, the division determined that the acquisition of the patents by Google did not substantially lessen competition, but how Google may exercise its patents in the future remains a significant concern.

For these reasons the division continues to have concerns about the potential inappropriate use of SEPs to disrupt competition and will continue to monitor the use of SEPs in the wireless device industry, particularly as they relate to smartphones and computer tablets. The division's continued monitoring of how competitors are exercising their patent rights will ensure that competition and innovation are unfettered in this important industry.

All three of the transactions highlight the complex intersection of intellectual property rights and antitrust law and the need to determine the correct balance between the rightful exercise of patent rights and a patent holder's incentive and ability to harm competition through the anticompetitive use of those rights.

Agency Cooperation

During the course of its investigation of the Google/Motorola Mobility transaction, the Department of Justice cooperated closely with the European Commission. In addition, the Department of Justice had discussions with the Australian Competition and Consumer Commission, Canadian Competition Bureau, Israeli Antitrust Authority and the Korean Fair Trade Commission. In connection with the investigations relating to the Nortel patent assets, the division worked closely with states of New York and California and with the Canadian Competition Bureau.

The Antitrust Division's Closing Statement Policy

The division provides this statement under its policy of issuing statements concerning the closing of investigations in appropriate cases. This statement is limited by the division's obligation to protect the confidentiality of certain information obtained in its investigations. As in most of its investigations, the division's evaluation has been highly fact-specific, and many of the relevant underlying facts are not public. Consequently, readers should not draw overly broad conclusions regarding how the division is likely in the future to analyze other collaborations or activities, or transactions involving particular firms. Enforcement decisions are made on a case-by-case basis, and the analysis and conclusions discussed in this statement do not bind the division in any future enforcement actions. Guidance on the division's policy regarding closing statements is available at: www.usdoj.gov/atr/public/guidelines/201888.htm.

12-210 Antitrust

CNET News

Why the Ford-Toyota hybrid tie-up is a big deal

Hybrids are moving from a niche for eco-minded drivers toward a mainstream solution for boosting fuel economy across all classes of vehicles.

by **Martin LaMonica** | August 22, 2011 12:09 PM PDT

A development partnership between Ford and Toyota will bring hybrid powertrains to rear-wheel-drive light trucks and SUVs. Pictured here is Ford's F-150.

(Credit: Ford)

commentary Hybrids are officially no longer just for the eco-minded do-gooders.

Ford and Toyota today announced a surprise agreement to co-develop a **hybrid powertrain for rear-wheel-drive light trucks and SUVs [http://www.cnet.com/8301-11128_3-20095417-54/ford-and-toyota-team-on-hybrids-for-trucks-suvs/]** in an effort to share development costs.

The collaboration means that there will be far more people than just Prius drivers who can boast the superior mileage of hybrids. Now people more concerned with horsepower and towing torque will be introduced to a technology once pigeonholed as way to show off drivers' environmental bona fides. Common sense, it seems, has finally found its way to SUV and truck makers.

Since both companies already have front-wheel-drive hybrid systems, this new architecture, expected later this decade, fills a hole in their technology platforms. But for consumers and the rest of the auto industry, the announcement is a clear endorsement of hybrid technology. Combined with other fuel-saving tricks, hybrids are poised to spread beyond niche status and bring better fuel economy to a broader range of vehicles.

"This is the kind of collaborative effort that is required to address the big global challenges of energy independence and environmental sustainability," Ford CEO Alan Mulally said in a **statement [http://www.marketwatch.com/story/ford-toyota-to-collaborate-on-developing-new-hybrid-system-for-light-trucks-suvs-future-telematics-standards-2011-08-22?reflink=MW_news_stmp]**.

Altruism is nice, but this is also about smart business. Ford and Toyota will continue to make their own vehicles. They'll compete truck for truck, just as you may expect. But this deal is about sharing resources, raising the bar for hybrid development, and getting it done as quickly as possible.

A chance meeting between Mulally and Toyota chief Akio Toyoda in an airport helped spark discussions but formal talks began in April, **according to reports [http://www.detnews.com/article/20110822/AUTO01/108220379/1148/Ford--Toyota-to-collaborate-on-hybrid-trucks-to-better-hit-fuel-economy-goals]**. During a press conference today, Toyota said that U.S. buyers don't appear to be willing to give up their large vehicles, which drove the companies to work together on hybrids for SUVs and light trucks.

"Our collaboration with Ford is a move to make hybrid technology more widely available in sport-utility vehicles and in trucks. Those kinds of models are indispensable to American customers. And providing them with our hybrid technology will help conserve energy and reduce output of greenhouse gas here in the United States," **said Toyota Executive Vice President Takeshi Uchiyamada [http://pressroom.toyota.com/releases/remarks+ford+toyota+uchiyamada.ht**

Plug-ins versus hybrids

The question of which technologies offer the best route to improved fuel efficiency has taken on new urgency in the wake of more stringent **EPA fuel economy standards [http://www.cnet.com/8301-11128_3-20085443-54/technologies-that-will-get-automakers-to-54.5-mpg/]** announced last month.

Electric **cars [http://reviews.cnet.com/car-tech/]** and plug-in hybrids benefit from plenty of buzz, but experts say that automakers can meet those ambitious goals mainly by engine improvements and hybrids. There still is a role for all-electric vehicles and plug-in hybrids, which are the same as traditional hybrids but have a larger battery. In the next year, both Ford and Toyota plan to introduce all-electric vehicles, such as the electric Ford Focus and electric RAV4 SUV, as well as plug-in hybrids.

Plug-in vehicles will appeal to consumers who want to cut down their oil consumption, lower their daily driving costs, and have the most environmentally friendly car possible. Fleet operators are also natural buyers of plug-in vehicles since they have well-understood driving routes and will highly value lower operating expenses from cheaper fuel (electricity).

But hybrids mitigate the big downside of plug-ins: battery costs. A lithium ion battery pack for a sedan with a range of about 100 miles costs in the neighborhood of $10,000. Those costs will come down with better technology and manufacturing scale, but there's no clear technical breakthrough which will make EVs undercut fuel-efficient gas cars on purchase price alone.

Traditional hybrids also add costs, but Ford and Toyota's announcement today demonstrates their belief the additional costs will deliver significant benefits in fuel savings. Combined, the two auto companies have already solid millions of hybrids over the past decade, so the technology is mature and relatively familiar to consumers.

And when it comes to electrification, a little bit goes a long way. In addition to traditional hybrids, automakers are making so-called microhybrids where a small energy device will run a car's electronics when it's idle. That battery also helps during acceleration and recuperates energy from braking.

There are still questions over the environmental benefits of plug-in electric vehicles, too. If the source for electricity is from coal, the greenhouse gas profile of a plug-in hybrid, when measured over the entire lifecycle, is **about the same as a hybrid [http://www.cnet.com/8301-11128_3-20028465-54.html]**, according to a report done by the Electric Power Research Institute.

In the end, automakers will be pragmatic and use every tool available to them and not count on one way to do it.

"We will continue to improve the internal combustion engine, take weight out of vehicles, and work on aerodynamics--all that work is still going," said Ford representative Alan Hall. "This is where we need to take light trucks in order to meet customer expectations."

And in a few years, those customers will get to have their trucks without the pain they experience today at the gas pump. Thankfully, automakers have agreed that better fuel efficiency is an industry-wide priority and hybrid technology is one available means for getting there.

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